to the corporation. *Goddard* v. *Grand Trunk Ry.*, 57 Me. 202, 2 Am. Rep. 39.

DEEDS—PRIVY EXAMINATION OF MARRIED WOMEN OVER TELEPHONE.—A married woman joined her husband in a deed of trust of her separate property for the purpose of securing a debt which her son owed to the defendant. After signing the deed, it was taken to the notary public who called Mrs. Wester, the grantor, over the telephone and attempted to take her privy examination in that manner. *Held,* a privy examination thus taken was ineffective under the statute. *Wester* v. *Hurt et al.* (1910), — Tenn. —, 130 S. W. 842.

Very few reported cases are to be found which involve acknowledgments or privy examinations taken over the telephone. It has been held that an acknowledgment of a married woman taken by the notary over the telephone did not of itself vitiate the deed, when the certificate was in due form and not impeached by fraud, duress or mistake. *Banning* v. *Banning,* 80 Cal. 271, 22 Pac. 210, 13 Am. St. Rep. 156; and in *Sullivan* v. *Bank,* 37 Tex. Civ. App. 228, 83 S. W. 421, it was held that the oath to an affidavit which the statute requires shall be administered to the affiant in the personal presence of the officer administering the oath cannot be administered by use of the telephone though the officer is familiar with the voice of the affiant; and in *Ex Parte Terrell* (Tex. Crim. App.) 95 S. W. 536 it was held that a statute requiring the reading of a subpoena in the hearing of a witness was not complied with by reading it over the telephone. These cases and the principal case seem to be correctly decided, and perhaps the reason for the scarcity of similar decisions is to be found in the fact that the officer's certificate is considered conclusive as to all matters except fraud. *Baldwin* v. *Snowden,* 11 Ohio St. 203; *Council Bluffs Sav. Bank* v. *Smith,* 59 Neb. 90, 80 N. W. 270.

ESTOPPEL—WHAT CONSTITUTES.—E., holding a beneficiary certificate issued by appellee, changed the beneficiary, naming appellant in place of one D. Upon E's death both appellant and D. claimed the money due on the certificate. Appellee wrote to appellant that it recognized her as the rightful beneficiary, but requested that she bring suit to dispose of the claim of D. and the appellee would interplead and pay the money into court. Suit was brought by appellant against appellee in which D. intervened and set up her claim. The appellee defended on the ground that the contract was ultra vires and void. *Held,* appellee was estopped to deny its liability. *Irwin* v. *Sovereign Camp of Woodmen of the World* (1910), — N. M. —, 110 Pac. 550.

It is well settled that if representations or admissions are made with the intention that a party shall act upon them, and that party, believing them to be true does act upon them, the party so making the representations or admissions will be estopped to deny them if the party, relying and acting thereon, would be prejudiced or injured by such denial. *Ensel* v. *Levy & Bro.,* 46 Ohio St. 255; *Meister* v. *Birney,* 24 Mich. 435; *Chesapeake &c Ry.* v. *Walker,* 100 Va. 69, 40 S .E. 633. The elements which must be present to

create an estoppel are, first: representations or admissions of material facts inconsistent with the claim the party making them proposes to set up, *Holcomb* v. *Boynton*, 151 Ill. 294; *Estis* v. *Jackson*, 111 N. C. 145, 32 Am. St. Rep. 784, second: the representations or admissions must be wilfully intended to lead the party setting up the estoppel to rely upon them, *Leather &c. Bank* v. *Morgan*, 117 U. S. 96; *Lackman* v. *Kearney*, 142 Cal. 112, 75 Pac. 668; *Hardy* v. *Chesapeake Bank*, 51 Md. 562, 34 Am. Rep. 325, third: they must be made with a knowledge of the facts by the party to be estopped, *Keifer* v. *City of Bridgeport*, 68 Conn. 401, 36 Atl. 801; *Fay* v. *Slaughter*, 194 Ill. 157, 62 N. E. 592; *Smith* v. *Miller*, 66 Tex. 74, 17 S. W. 399, fourth: the party claiming to be influenced must be ignorant of the facts, *Kiefer* v. *Klinsick*, 144 Ind. 46; *Adams* v. *Ashman*, 203 Pa. St. 536, 53 Atl. 375; *Brothers* v. *Bank of Kaukauna*, 84 Wis. 381, 54 N. W. 786, fifth: the party setting up the estoppel must do some act in reliance upon the representations, *Lincoln* v. *Gay*, 164 Mass. 537, 42 N. E. 95, 49 Am. St. Rep. 480; *Hull* v. *Hull*, 48 Conn. 250, 40 Am. Rep. 165, whereby he will be substantially injured if the other party is permitted to retract his statements, *The Penn. &c. Co.* v. *Heiss*, 141 Ill. 35, 33 Am. St. Rep. 273; *Goodwin* v. *Norton*, 92 Me. 532; *Kirkham* v. *Bank of America*, 165 N. Y. 132, 58 N. E. 753, 80 Am. St. Rep. 714. In the principal case it is not apparent how the appellant was prejudiced by the representations and admissions of the appellee. A party is not estopped from asserting a claim on the trial by the fact that he made a different representation in regard thereto to the adverse party before the trial, where the latter was not misled thereby. *Fischer* v. *Johnson*, 106 Ia. 181, 76 N. W. 658; *Troy* v. *Rogers*, 113 Ala. 131, 20 South. 999; *Pearson* v. *Brown*, 105 Ga. 802, 31 S. E. 746. Had the appellee made no representations or admissions, but had simply refused to pay the appellant, she would have had to take the same steps to enforce her claim and her action would have been open to the same defenses.

EVIDENCE—ADMISSIBILITY OF DECLARATION OF PAIN AND SUFFERING.—In an action by a passenger against a carrier to recover damages for personal injury, the court allowed witnesses to testify as to exclamations of present pain and suffering made by the plaintiff several months after the injury. *Held*, that the admission in evidence of such exclamations in support of the issues in the case was not error, even though they were not admissible as a part of the res gestae. *Colorado Springs & I. R. Co.* v. *Allen* (1910), — Colo. —, 108 Pac. 990.

It must be conceded, that according to the weight of authority in the United States, exclamations of pain or of physical or mental suffering being undergone at the time, are admissible in evidence as substantive and original evidence of a mental condition or state, whether such exclamations be made under circumstances so intimately connected with the occasion of injury as to constitute a part of the res gestae, or whether they are made at a time and place considerably removed from that of the injury. *Travellers Ins. Co.* v. *Mosly*, 8 Wall. 397; *Anderson* v. *Citizens St. R. Co.*, 12 Ind. App. 194; *Will* v. *Mendon*, 108 Mich. 251; *Ashton* v. *Detroit C. R. Co.*, 78 Mich. 587;